SOUTHERN DISTRICT OF NEW YORK		
FIRSTBANK PUERTO RICO,	X : : . 09 Civ. 10317 (GBD	<i>'</i>
Plaintiff,	:	,
- against -	: :	
BARCLAYS CAPITAL INC.,	: :	
Defendant.	: :	
	X	

## **DECLARATION OF ARI D. MACKINNON**

Pursuant to 28 U.S.C. § 1746, Ari D. MacKinnon declares as follows:

- I am an associate of the law firm of Cleary Gottlieb Steen & Hamilton
   LLP, counsel for defendant Barclays Capital Inc. ("Barclays"). I am a member of the Bar of this
   Court.
- I submit this Declaration in connection with Barclays' Reply
   Memorandum of Law in Further Support of its Motion to Dismiss the Complaint, dated
   December 21, 2009.
- 3. I attach true and correct copies of the following documents as Exhibits A through H, which are pleadings in other proceedings of which this Court may take judicial notice:

<u>Exhibit</u>	<u>Document</u>
A	Order Directing Appointment of an Examiner Pursuant to Section 1104(c)(2) of the Bankruptcy Code (D.I. 2569 in <u>In re Lehman Brothers Holdings Inc.</u> , No. 08-13555 (JMP) (Bankr. S.D.N.Y. Jan. 16, 2009)).
В	D.I. 7531 on Docket Sheet, as of April 15, 2010, in <u>In re Lehman</u> Brothers Holdings Inc., No. 08-13555 (JMP) (Bankr. S.D.N.Y.).

<u>Exhibit</u>	<u>Document</u>
С	Order Authorizing the Debtors and Barclays Capital Inc. to File Under Seal Certain Schedules to the Purchase Agreement (D.I. 2290 in <u>In re Lehman Brothers Holdings Inc.</u> , No. 08-13555 (JMP) (Bankr. S.D.N.Y. Dec. 17, 2008)).
D	Schedule A and B to Clarifying Letter Agreement (D.I. 2303 in <u>In re Lehman Brothers Holdings Inc.</u> , No. 08-13555 (JMP) (Bankr. S.D.N.Y. Dec. 18, 2008) (filed under seal pursuant to court order)).
Е	Reply Memorandum Of Barclays Capital Inc. In Further Support Of Motion Of Barclays Capital Inc. To Enforce The Sale Order And Secure Delivery Of All Undelivered Assets (D.I. 8076 in In re Lehman Brothers Holdings Inc., No. 08-13555 (JMP) (Bankr. S.D.N.Y. April 5, 2010)).
F	Schedules A and B to the Clarification Letter Agreement (BCI Exhibit 524 to D.I. 8077 in <u>In re Lehman Brothers Holdings Inc.</u> , No. 08-13555 (JMP) (Bankr. S.D.N.Y. April 5, 2010)).
G	Notice of Hearing on Motion of FirstBank Puerto Rico Pursuant to Fed. R. Bankr. P. 2004(A) for Limited Discovery from Debtors Lehman Brothers Special Financing Inc. and Lehman Brothers Holdings Inc. (D.I. 4485 in In re Lehman Brothers Holdings Inc., No. 08-13555 (JMP) (Bankr. S.D.N.Y. July 24, 2009)).
Н	List of FirstBank's Collateral by CUSIP (Exhibit A to D.I. 4485 in In re Lehman Brothers Holdings Inc., No. 08-13555 (JMP) (Bankr. S.D.N.Y. July 24, 2009)).

4. I also attach hereto as Exhibit I excerpts of Schedule A to the Clarification Letter Agreement, highlighted by me to show any overlap between the CUSIPs on the Schedules and those of FirstBank's collateral. In preparing Exhibit I, I compared the CUSIPs listed on FirstBank's list of collateral, filed as Exhibit A to D.I. 4485 in In re Lehman Brothers Holdings Inc., No. 08-13555 (JMP) (Bankr. S.D.N.Y. July 24, 2009), and as Exhibit H hereto, to the list of CUSIPs appearing in Schedules A and B to the Clarification Letter Agreement, filed as BCI Exhibit 524 to D.I. 8077 in In re Lehman Brothers Holdings Inc., No. 08-13555 (JMP) (Bankr. S.D.N.Y. April 5, 2010), and as Exhibit F hereto. I excerpted those pages containing matching

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CUSIPs and highlighted in yellow such matching CUSIPs. In total, nineteen of the twenty-three unique CUSIPs enumerated on FirstBank's list of collateral appear on Schedule A. Of those nineteen CUSIPs, the corresponding par value, rounded to the nearest dollar, for fourteen of them is the same on both Schedule A and the list of collateral; the par value for the other five matching CUSIPs is smaller on Schedule A than on FirstBank's list of collateral. I did not identify any securities on Schedule B whose CUSIPs match the CUSIPs on FirstBank's list of collateral and, thus, Exhibit I contains no excerpts from Schedule B.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on April 15, 2010, in New York, New York.

ARI D. MACKINNON